

ASSEMBLY BILL

No. 590

Introduced by Assembly Member Feuer

February 25, 2009

An act to add Article 9.6 (commencing with Section 6159.5) to Chapter 4 of Division 3 of the Business and Professions Code, relating to the practice of law.

LEGISLATIVE COUNSEL'S DIGEST

AB 590, as introduced, Feuer. Legal aid.

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law provides that it is the duty of an attorney to, among other things, never reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed. Existing law provides that a lawyer may fulfill his or her ethical commitment to provide pro bono services, in part, by providing financial support to organizations providing free legal services to persons of limited means.

This bill would state the intent of the Legislature to expand the availability of legal counsel in critical civil matters through locally controlled pilot programs designed to test and evaluate new methods for the fair and cost-efficient resolution of legal disputes, and the comprehensive enforcement of vital legal rights, with respect to basic human needs. The bill would state the additional intent of the Legislature to encourage the legal profession to make further efforts to meet its professional responsibilities and other obligations by providing pro bono legal services and financial support of nonprofit legal organizations that provide free legal services to underserved communities.

This bill would prohibit a person or organization that is not a specified type of legal aid organization, as defined, from using the term “legal aid,” or any confusingly similar name in any firm name, trade name, fictitious business name, or other designation, or on any advertisement, letterhead, business card, or sign. The bill additionally would prohibit any person from charging a fee for any legal form or other document created by a legal aid organization, a court, or other public agency that is available to the public without charge, or from charging a fee to assist in the provision of self-help services that are provided without charge by a court or legal aid organization. The bill would subject a person or organization that violates these prohibitions to specified civil liability.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to expand the
2 availability of legal counsel in critical civil matters through locally
3 controlled pilot programs designed to test and evaluate new
4 methods for the fair and cost-efficient resolution of legal disputes,
5 and the comprehensive enforcement of vital legal rights, with
6 respect to basic human needs. These pilot programs shall be
7 implemented without additional allocations from or expenditures
8 by the state General Fund. The pilot programs should be designed
9 to guard against the involuntary waiver of those rights or their
10 disposition by default, particularly by indigent parties, including
11 the elderly and people with disabilities. These pilot programs
12 should be designed to address the substantial inequities in timely
13 and effective access to justice that often give rise to an undue risk
14 of erroneous decision because of the nature and complexity of the
15 law and the proceeding or disparities between the parties in
16 education, sophistication, language proficiency, and legal
17 representation or access to self-help or alternative dispute resolution
18 services. The Legislature further recognizes that there are
19 significant social and governmental costs of depriving such parties
20 of those legal rights, and that these costs may be avoided by
21 providing the assistance of counsel where parties have a reasonable
22 possibility of achieving a favorable outcome.

23 SEC. 2. In light of the large and ongoing justice gap between
24 the legal needs of low-income Californians and the legal resources

1 available to meet those needs, it is the intent of the Legislature to
2 encourage the legal profession to make further efforts meet its
3 professional responsibilities and other obligations by providing
4 pro bono legal services and financial support of nonprofit legal
5 organizations that provide free legal services to underserved
6 communities.

7 SEC. 3. Article 9.6 (commencing with Section 6159.5) is added
8 to Chapter 4 of Division 3 of the Business and Professions Code,
9 to read:

10
11 Article 9.6. Legal Aid Organizations
12

13 6159.5. The Legislature hereby finds and declares all of the
14 following:

15 (a) Legal aid programs provide a valuable service to the public
16 by providing free legal services to the poor.

17 (b) Private, for-profit organizations that have no lawyers have
18 been using the name “legal aid” in order to obtain business from
19 people who believe they are obtaining services from a nonprofit
20 legal aid organization.

21 (c) Public opinion research has shown that the term “legal aid”
22 is commonly understood by the public to mean free legal assistance
23 for the poor.

24 (d) Members of the public seeking free legal assistance are often
25 referred by telephone and other directory assistance information
26 providers to for-profit organizations that charge a fee for their
27 services, and there are a large number of listings in many telephone
28 directories for “legal aid” that are not nonprofit but are actually
29 for-profit organizations.

30 (e) The Los Angeles Superior Court has held that there is a
31 common law trademark on the name “legal aid,” which means
32 legal services for the poor provided by a nonprofit organization.

33 (f) The public will be benefited if for-profit organizations are
34 prohibited from using the term “legal aid,” in order to avoid
35 confusion.

36 6159.51. For purposes of this article, “legal aid organization”
37 means a nonprofit organization that provides civil legal services
38 for the poor without charge.

39 6159.52. (a) It is unlawful for any person or organization to
40 use the term “legal aid,” “legal aide,” or any confusingly similar

1 name in any firm name, trade name, fictitious business name, or
2 any other designation, or on any advertisement, letterhead, business
3 card, or sign, unless the person or organization is a legal aid
4 organization subject to fair use principles for nominative,
5 descriptive, or noncommercial use.

6 (b) It is unlawful for any person to sell or charge a fee for any
7 legal form or other document created by a legal aid organization
8 or by a court or other public agency of the state regarding or for
9 use in a court action or proceeding if the form or other document
10 is available to the public without charge from the legal aid
11 organization, court, or other public agency.

12 (c) It is unlawful for any person for a fee to assist or offer to
13 assist in the provision of self-help services that are provided
14 without charge by a court or legal aid organization.

15 6159.53. (a) Any consumer injured by a violation of Section
16 6159.52 may file a complaint and seek injunctive relief, restitution,
17 and damages in the superior court of any county in which the
18 defendant maintains an office, advertises, or is listed in a telephone
19 directory.

20 (b) A person who violates Section 6159.52 shall be subject to
21 an injunction against further violation of Section 6159.52 by any
22 legal aid organization that maintains an office in any county in
23 which the defendant maintains an office, advertises, or is listed in
24 a telephone directory. In an action under this subdivision, it is not
25 necessary to allege or prove actual damage to the plaintiff, and
26 irreparable harm and interim harm to the plaintiff shall be
27 presumed.

28 (c) Reasonable attorney's fees shall be awarded to the prevailing
29 plaintiff in any action under this section.